

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

LINDA DOWNS,

Plaintiff,

v.

RIVER CITY GROUP, LLC; et al.,

Defendants.

3:11-cv-0885-LRH-WGC

ORDER

Before the court is plaintiff Linda Downs (“Downs”) motion for partial summary judgment. Doc. #157.¹ Defendant Minnesota Life Insurance Company (“Minnesota Life”) filed an opposition (Doc. #161) to which Downs replied (Doc. #180).

I. Facts and Procedural History

In July, 2005, Downs, along with her husband Ronald, purchased real property through a mortgage note and deed of trust originated by defendant River City Group, LLC (“River City”). In early December, 2009, Downs and her husband purchased mortgage payment protection insurance advertised by defendant Wells Fargo Bank, NA (“Wells Fargo”) and underwritten by defendant Minnesota Life. The insurance policy provided for twelve (12) monthly payments of \$2,398.23 - the amount of the Downs’ mortgage - to Wells Fargo in the event of Ronald’s death.

¹ Refers to the court’s docket entry number.

1 On May 31, 2010, Ronald passed away. On June 10, 2010, Downs contacted both Wells
2 Fargo and Minnesota Life and notified them of Ronald's passing and requested the payment of the
3 mortgage payments pursuant to the mortgage insurance policy. On June 17, 2010, Minnesota Life
4 acknowledged receipt of Downs's claim and requested additional information including:
5 (1) a certified death certificate; (2) a completed Health History Information Request form; and
6 (3) a completed Health Insurance Portability and Accountability Act ("HIPAA") authorization
7 form. Downs sent the requested information on July 6, 2010, and Minnesota Life received the
8 information on July 9, 2010.

9 After receiving the information, Minnesota Life communicated to Downs that because
10 Ronald had died within the first two years of the policy's effective date, the coverage was
11 contestable, and Minnesota Life would be conducting a routine coverage review. As part of its
12 coverage investigation, Minnesota Life requested additional medical records from Dr. John
13 Williamson ("Dr. Williamson") and the Northern Nevada Medical Center ("NNMC").
14 Minnesota Life received the records from Dr. Williamson on July 29, 2010, and received the
15 records from NNMC on August 11, 2010.

16 On August 18, 2010, Minnesota Life completed its contestability review, approved Downs'
17 claim for payment, and sent Wells Fargo a check for \$9,572.92 to cover the mortgage payments
18 from May 2010, through August 2010. Thereafter, Minnesota Life made payments in accord with
19 the payment schedule as prescribed under the policy. However, prior to the disbursement of funds
20 from Minnesota Life, defendant Wells Fargo initiated non-judicial foreclosure proceedings against
21 the underlying property for failure to pay the mortgage payments since May 2010.

22 Subsequently, Downs filed a complaint alleging ten causes of action against all defendants:
23 (1) intentional infliction of emotional distress; (2) negligent infliction of emotional distress;
24 (3) breach of contract; (4) breach of the implied covenants of good faith and fair dealing; (5) unfair
25 claims practices; (6) conspiracy to defraud; (7) negligence; (8) invasion of privacy; (9) unjust
26 enrichment; and (10) quiet title. Doc. #1, Exhibit A. Thereafter, Downs filed the present motion for

1 partial summary judgment on her claim for breach of contract against defendant Minnesota Life.
2 Doc. #157.

3 **II. Legal Standard**

4 Summary judgment is appropriate only when “the pleadings, depositions, answers to
5 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
6 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
7 law.” Fed.R.Civ.P. 56(c). In assessing a motion for summary judgment, the evidence, together with
8 all inferences that can reasonably be drawn therefrom, must be read in the light most favorable to
9 the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
10 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

11 The moving party bears the burden of informing the court of the basis for its motion, along
12 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,
13 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party
14 must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could
15 find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.
16 1986); *see also Idema v. Dreamworks, Inc.*, 162 F.Supp.2d 1129, 1141 (C.D.Cal. 2001).

17 To successfully rebut a motion for summary judgment, the non-moving party must point to
18 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson*
19 *Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might affect the
20 outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
21 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is
22 not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material
23 fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for
24 the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of
25 evidence in support of the plaintiff’s position will be insufficient to establish a genuine dispute;
26 there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at 252.

1 **III. Discussion**

2 In her motion, Downs contends that defendant Minnesota Life breached the mortgage
3 insurance policy by failing to pay the mortgage payments within thirty (30) days of receipt of
4 Ronald's death certificate. *See* Doc. #157. The court disagrees.


5 In addressing Minnesota Life's separately filed motion for summary judgment (Doc. #155),
6 the court found that Minnesota Life did not breach the mortgage payment protection policy as a
7 matter of law because Minnesota Life timely paid the mortgage payments to defendant Wells Fargo
8 after satisfactory proof of Ronald's death. *See* Doc. #207. In particular, the court found that "the
9 relevant contractual provision of the underlying policy provides that 'the monthly benefit will be
10 payable within 30 days after we receive proof satisfactory to us that you died . . . while insured
11 under this certificate.'" *Id.* (internal citations omitted). " The court interpreted this provision to
12 require satisfactory proof that (1) the decedent died, and (2) the decedent was indeed insured under
13 the policy at the time of his death. *Id.* As to the second element, the policy contained a
14 contestability clause during the first two years of the policy's life that allowed Minnesota Life to
15 conduct a timely contestability review prior to approving Downs's claim, including requesting
16 additional medical information about Ronald at the time of his death. *Id.*

17 Here, Minnesota Life, upon receipt of the requested medical records on August 11, 2010,
18 completed its contestability investigation and paid out all owed benefits on August 18, 2010, only
19 seven days after receiving the requested information. The whole process, starting with Downs filing
20 for the benefits under the policy in June and providing a death certificate on July 9, 2010, lasted
21 less than two months - which included the weeks of time Minnesota Life waited for Downs to
22 produce the initial required documentation. Thus, because Minnesota Life had a legal right to
23 conduct its contestability investigation and the investigation was conducted within a reasonable
24 amount of time, the court found that there was no breach of the insurance policy as a matter of law.
25 *See* Doc. #207. Accordingly, the court shall deny Down's motion for partial summary judgment
26 against Minnesota Life as to her claim for breach of contract.

1 IT IS THEREFORE ORDERED that plaintiff's motion for partial summary judgment
2 (Doc. #157) is DENIED.

3 IT IS SO ORDERED.

4 DATED this 2nd day of December, 2013.


LARRY R. HICKS
UNITED STATES DISTRICT JUDGE